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OFFICE OF PETITIONS

BANNER & WITCOFF
1001 G ST NW
SUITE 1100
WASHINGTON DC 20001-4597

In re :
Perkins, et al. :
Application No. 10/087,897 : DECISION REGARDING
Filed: March 1, 2002 : PATENT TERM ADJUSTMENT
Attorney Docket No. 006759.00016 :
:

This is a decision on the "SECOND REQUEST FOR RECONSIDERATION OF APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705", filed June 22, 2006. Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from two hundred twenty-nine (229) days to five hundred thirty (530) days.

The application for patent term adjustment is **GRANTED**.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is **five hundred thirty (530) days**. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On November 10, 2005, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above identified application. The Notice stated that the patent term adjustment (PTA) to date is two hundred twenty-nine (229) days. On February 3, 2006, Applicants timely¹ submitted an application for patent term adjustment, asserting that the correct number of days of PTA at the time of the mailing of the Notice of Allowance is five hundred thirty-three (533) days. However, the application for patent term adjustment was dismissed in a decision mailed on March 31, 2006.

The Office determined a patent term adjustment of two hundred twenty-nine (229) days based on an adjustment for PTO delay of five hundred thirty-three (533) days pursuant to 35 U.S.C. 154(b)(1)(C)(iii) and 37 C.F.R. § 1.703(b)(4), reduced by Applicants' delays of three (3) days pursuant to 35 U.S.C. 154(b)(2)(C)(ii) and 37 C.F.R. § 1.704(b), and three hundred one (301) days pursuant to 35 U.S.C. 154(b)(2)(C)(iii) and 37 C.F.R. § 1.704(c)(8). The adjustment of three hundred one (301) days is at issue.

A review of the application file reveals that applicants filed an Information Disclosure Statement (IDS) on July 19, 2005, after they had previously filed a Reply Brief on September 21, 2004. § 1.704(d) states that an IDS will not be considered a failure to engage under (c)(8) if it is accompanied by a statement that "each item of information contained in the information disclosure statement was first cited in any communication from a foreign patent office in a counterpart application and that this communication was not received by an individual in 1.56(c) more than thirty days prior to the filing" of the IDS.² The IDS filed on July 19, 2005 did not contain a proper 37 C.F.R. § 1.704(d) statement.

With the request for reconsideration, applicants have certified under 37 C.F.R. §1.704(d) that each item of information contained in the information disclosure statement was first cited in any communication from a foreign patent office in a counterpart application and that the communication was not received by an individual in 1.56(c) more than 30 days prior to the filing of the information disclosure statement.

¹ Applicants filed the application for patent term adjustment together with the payment of the issue fee.

² Emphasis added.

In view thereof, the correct determination of patent term adjustment is **five hundred thirty (530) days**.

The matter is being forwarded to the Office of Patent Publication for processing into a patent.

Telephone inquiries specific to this matter should be directed to Cliff Congo, Petitions Attorney, at (571)272-3207.

A handwritten signature in black ink, appearing to read "Kery Fries". The signature is fluid and cursive, with the first name "Kery" and last name "Fries" clearly distinguishable.

Kery Fries
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

Enclosure: Copy of Revised PAIR Screen

Day : Monday
Date : 8/21/2006

PALM INTRANET

Time: 14:06:29

PTA Calculations for Application: 10/087897

Application Filing Date:	03/01/2002	PTO Delay (PTO):	533
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	304
Post-Issue Petitions:	0	Total PTA (days):	530
PTO Delay Adjustment:	301		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
75	08/21/2006	ADJUSTMENT OF PTA CALCULATION BY PTO	301		
70.5	04/19/2006	PTA 36 MONTHS			
70	05/09/2006	PATENT ISSUE DATE USED IN PTA CALCULATION			
69	04/13/2006	PETITION ENTERED			
68	04/10/2006	EXPORT TO FINAL DATA CAPTURE			
67	04/07/2006	DISPATCH TO FDC			
66	04/07/2006	TC RETURN TO PUBS			
65	03/31/2006	PETITION DECISION - DISMISSED			
64	02/22/2006	PUBS CASE REMAND TO TC			
63	02/16/2006	APPLICATION IS CONSIDERED READY FOR ISSUE			
62	02/03/2006	ISSUE FEE PAYMENT VERIFIED			
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58	12/13/2005	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
57	11/15/2005	EXPORT TO INITIAL DATA CAPTURE			
56	11/16/2005	RECEIPT INTO PUBS			
55	11/10/2005	MAIL NOTICE OF ALLOWANCE			
54	11/09/2005	ISSUE REVISION COMPLETED			
53	11/09/2005	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
52	11/09/2005	NOTICE OF ALLOWABILITY			
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50	08/29/2005	REFERENCE CAPTURE ON IDS			
49	08/29/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
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47	07/19/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		301	36
46	07/21/2005	MAIL BPAI DECISION ON APPEAL - REVERSED	533		26
45	07/21/2005	BPAI DECISION - EXAMINER REVERSED			
44	06/17/2005	CORRESPONDENCE ADDRESS CHANGE			
43	06/17/2005	CHANGE IN POWER OF ATTORNEY (MAY INCLUDE ASSOCIATE POA)			
42	04/27/2005	DOCKETING NOTICE MAILED TO APPELLANT			
41	04/27/2005	ASSIGNMENT OF APPEAL NUMBER			
40	04/07/2005	APPEAL AWAITING BPAI DOCKETING			
39	10/01/2004	MAIL REPLY BRIEF NOTED BY EXAMINER			
38	09/30/2004	REPLY BRIEF NOTED BY EXAMINER			
37	09/29/2004	DATE FORWARDED TO EXAMINER			
36	09/21/2004	REPLY BRIEF FILED			
35	09/21/2004	CORRESPONDENCE ADDRESS CHANGE			
34	07/15/2004	MAIL EXAMINER'S ANSWER			
33	07/12/2004	EXAMINER'S ANSWER TO APPEAL BRIEF			
32	04/27/2004	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
31	04/27/2004	DATE FORWARDED TO EXAMINER			
30	04/08/2004	APPEAL BRIEF FILED			
29	08/18/2003	REFERENCE CAPTURE ON IDS			
28	09/30/2002	REFERENCE CAPTURE ON IDS			
27	02/11/2004	CORRESPONDENCE ADDRESS CHANGE			
26	02/05/2004	NOTICE OF APPEAL FILED			
25	01/15/2004	MAIL FINAL REJECTION (PTOL - 326)			
24	01/14/2004	FINAL REJECTION			
23	09/29/2003	NEW OR ADDITIONAL DRAWING FILED			
22	11/13/2003	DATE FORWARDED TO EXAMINER			
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19	06/23/2003	MAIL NON-FINAL REJECTION			
18	06/18/2003	NON-FINAL REJECTION			
17	06/04/2003	DATE FORWARDED TO EXAMINER			

16	05/30/2003	RESPONSE TO ELECTION / RESTRICTION FILED			
15	05/30/2003	REQUEST FOR EXTENSION OF TIME - GRANTED			
14	03/26/2003	MAIL RESTRICTION REQUIREMENT			
13	03/24/2003	REQUIREMENT FOR RESTRICTION / ELECTION			
12	02/03/2003	RESCIND NONPUBLICATION REQUEST FOR PRE GRANT PUBLICATION			
11	09/30/2002	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
10	06/26/2002	CASE DOCKETED TO EXAMINER IN GAU			
9	06/03/2002	APPLICATION DISPATCHED FROM OIPE			
8	05/31/2002	APPLICATION IS NOW COMPLETE			
7	05/13/2002	PAYMENT OF ADDITIONAL FILING FEE/PREEXAM			
6	05/13/2002	A STATEMENT BY ONE OR MORE INVENTORS SATISFYING THE REQUIREMENT UNDER 35 USC 115, OATH OF THE APPLIC			
5	04/11/2002	NOTICE MAILED--APPLICATION INCOMPLETE--FILING DATE ASSIGNED			
4	04/11/2002	CORRESPONDENCE ADDRESS CHANGE			
3	04/05/2002	NOTICE MAILED--APPLICATION INCOMPLETE--FILING DATE ASSIGNED			
2	03/18/2002	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	03/01/2002	INITIAL EXAM TEAM NN			

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EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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